

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JEFFREY L. HAIGHT,	)	
	)	
Plaintiff,	)	4:04 CV 3363
	)	
v.	)	
	)	
	)	
KATCH, LLC, A Nebraska Limited	)	MEMORANDUM AND ORDER
Liability Company, d/b/a LUCKIE'S	)	
LOUNGE & GRILL,	)	
	)	
Defendant.	)	

Defendant has filed a motion to compel, for sanctions, and for attorneys fees and expenses as a result of the plaintiff's failure to respond to defendant's interrogatories and requests for production of documents. Plaintiff has not responded to the motion.

Defendant has shown attempted compliance with NECivR 7.1(i) which has not been successful because of the difficulty of plaintiff's counsel being unavailable. I consider the requirements of that rule to have been met.

The file reflects that after the motion was filed, no further certificates of service were filed indicating that the plaintiff has served responses to these discovery requests. Since more than thirty days have elapsed since the service of the requests, plaintiff has waived any objections he might otherwise have had under the provisions of Fed. R. Civ. P. 33 and 34. Thus, the motion to compel will be granted.

Additionally, by not responding to the motion, plaintiff has failed to show that the failure to respond to the discovery requests was "substantially justified," or that "other circumstances make an award of expenses unjust." Rule 37(a)(4)(A). Therefore, the rule requires that defendant recover such expenses.

IT THEREFORE HEREBY IS ORDERED:

1. The motion to compel, filing 20, is granted, and the plaintiff shall serve responses to all of the interrogatories and requests for production of documents within ten days of the date of this order.

2. Defendant is granted its request for expenses in filing the motion, including attorneys fees. Counsel shall confer with respect to the amount of fees and expenses to be awarded and also whether the award should be made against the plaintiff, his counsel, or both. If agreement is reached, a stipulation to that effect shall be filed within twenty days of the date of this order. If agreement is not reached, defendant shall file its application for fees and expenses within twenty days of the date of this order, properly supported.

3. The plaintiff is given ten days following the filing of defendant's application to file his response.

4. If either side desires a hearing on the question of fees and expenses, request therefor shall be made in the application or the response, as applicable. If the request is granted, such a hearing will be separately scheduled.

5. The clerk is ordered to include the court's award of fees and expenses occasioned by this order to become a part of the eventual judgment in the case, unless prior to the entry of judgment the clerk is informed in writing that the award has been paid, accompanied by written proof of payment.

DATED April 28, 2005

BY THE COURT:

s/ David L. Piester  
United States Magistrate Judge